

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CHRISTOPHER MCCOWEN,)	
)	
)	
Petitioner,)	Civil Action No.
)	11-12216-FDS
v.)	
)	
ANTHONY MENDOSA,)	
)	
Respondent.)	
)	

ORDER OF DISMISSAL

SAYLOR, J.

This is a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner Christopher McCowen is an inmate at Souza-Baranowski Correctional Center (“SBCC”) in Shirley, Massachusetts; defendant Anthony Mendosa is the warden at SBCC. The petition contains two grounds of asserted error: grand jury bias and ineffective assistance of counsel. (Pet. at 6-8). McCowen conceded that he did not exhaust his available state remedies with respect to his claim for ineffective assistance of counsel. (Pet. at 8).

This case was stayed on November 19, 2012, in order to allow petitioner to exhaust the available state-law remedies for his ineffective-assistance-of-counsel claim. On May 18, 2018, the Court lifted the stay because petitioner had not made substantial efforts to exhaust that claim despite having more than five years to so. Petitioner was given until June 15, 2018, to decide whether to dismiss the petition or dismiss the unexhausted claim so that the case can proceed on the merits of the exhausted claim. Petitioner has not filed a response.

Generally, if a petitioner files a “mixed petition” that includes both exhausted and unexhausted claims, a federal court may (1) dismiss the petition in its entirety, (2) allow the

petitioner to dismiss the unexhausted claims and proceed with the exhausted claims, or (3) stay the petition until the petitioner returns to state court to exhaust his previously unexhausted claims. *See Rhines v. Weber*, 544 U.S. 269, 275-76 (2005); *see Neverson v. Farquharson*, 366 F.3d 32, 42-43 (1st Cir. 2004). This case has already been stayed for petitioner to return to state court and he has failed to take advantage of that opportunity. He has also failed to take advantage of the opportunity to dismiss his unexhausted claim and proceed on the remaining claim. Accordingly, the Court will dismiss the petition.

For the foregoing reasons, the petition for a writ of habeas corpus is DISMISSED.

So Ordered.

Dated: June 25, 2018

/s/ F. Dennis Saylor
F. Dennis Saylor, IV
United States District Judge